



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/148056

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on June 06, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's December 2012 MA application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Russell Jones
12557 W Burleigh St Suite 8
Brookfield, WI 53005

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lori Rutzinski

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. On December 10, 2012 petitioner applied for MA requesting a backdate to November 2012.

3. On January 9, 2013 the agency issued a notice of decision to petitioner stating that effective November 1, 2012 her MA application was denied due to being over the asset limit.
4. On January 29, 2013 the petitioner supplied further verification of assets to the agency. The agency pended petitioner's MA eligibility and requested further verification of assets. On February 7, 2013 the agency issued a request for verification of petitioner's checking account and trust. The verification was due back to the agency on February 18, 2013.
5. On February 21, the agency issued another request for verification of petitioner's trust, extending that deadline to February 28, 2013. The agency included a note on that request stating, "Please include documents showing verification of: what type of trust was established on January 26, 2011, what was deposited into the trust, and a current balance."
6. On February 26, 2013 petitioner supplied some information regarding the trust. That information was Article 6 of the [REDACTED] Irrevocable Trust dated December 8, 2009. See Exhibit 7.
7. [REDACTED] was petitioner's roommate and friend. She died in September 2010 when petitioner was 84 years old.
8. On February 26, the agency issued another request for verification of petitioner's trust, extending that deadline to March 4, 2013.
9. On March 5, 2013 the agency issued a notice of decision stating that effective February 1, 2013 her MA application was denied for failing to verify the requested and required proof.

DISCUSSION

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. See *Medicaid Eligibility Handbook (MEH)*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. An individual is financially eligible for EBD-MA if the total value of all non-exempt liquid assets does not exceed \$2,000. Wis. Stats. §49.47(4)(b). The clear, unambiguous language of both Wis. Stat. §49.47(4)(b), and Wis. Admin. Code §DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until the actual date an individual's liquid assets fall below \$2,000, an individual is ineligible for MA.

As part of the eligibility determination, the agency is required to take into account certain assets owned by the petitioner. *MEH*, §16.1. Verification of assets is required on applications for MA for the Elderly, Blind, or Disabled. *MEH*, §20.3.5. The petitioner has primary responsibility for verifying information requested by the agency. *MEH*, §20.5. The first issue is whether the petitioner complied with the requests for verification. I find that she did. On February 26, 2013 petitioner supplied Article 6 of the [REDACTED] Irrevocable Trust dated December 8, 2009. See Exhibit 7. The agency did not consider this to be the trust information it needed and therefore the case was closed for lack of verification. However, at hearing one can see that this Article 6 is part of the entire [REDACTED] Irrevocable Trust whose legal effect was that petitioner had an outright distribution from the Trust, but upon the Grantor's death, if petitioner was disabled at that time, it became a supplemental needs trust, or a special needs trust. Therefore, the question becomes whether the Article 6 supplement needs trust is an available asset.

In order to qualify as a special needs trust which would be disregarded when counting an applicant's assets and ultimate MA eligibility, the MEH provides the following:

Disregard special needs trusts whose sole beneficiary is under age 65 and totally and permanently disabled (under SSI program rules) if it meets these conditions:

1. The trust must be established for the sole benefit of the disabled person by his/her parent, grandparent, legal guardian or a court, and

2. Contain a provision that, upon the death of the beneficiary, the Wisconsin Medicaid program will receive all amounts remaining in the trust not in excess of the total amount of Medicaid paid on behalf of the beneficiary.

The exception continues after the person turns 65, provided s/he continues to be disabled.

However, a grantor cannot add to the trust after the beneficiary turns 65. Anything added to the trust after the beneficiary turns 65 is a divestment. Money added before the beneficiary turns 65 is not a divestment.

MEH, §16.6.5. See also Wis. Stat. §49.454.

Under the facts before me, I cannot find that this trust meets the requirements to be considered a special needs trust that would be disregarded for MA asset eligibility. First, petitioner as the sole beneficiary was not under age 65 at the time the trust was created or at the time the trust would have been converted to a special needs trust when the grantor died. Second, petitioner has not been found totally and permanently disabled under SSI program rules. Third, the trust was not established for the sole benefit of the petitioner by her parent, grandparent, legal guardian or a court. Fourth, there is no provision that, upon the death of the beneficiary, the Wisconsin Medicaid program will receive all amounts remaining in the trust not in excess of the total amount of Medicaid paid on behalf of the beneficiary. There was no dispute that the trust value was above \$2000. Based on the foregoing I will uphold the agency's denial of her MA application.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner's December 2012 MA application.

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

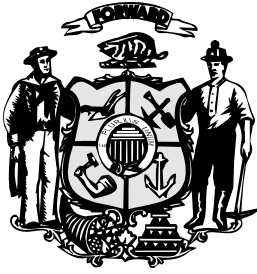
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of June, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 24, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
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